



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/375,045 08/16/99 MURJI

Z CAN-117

EXAMINER

QM12/1011

AUDLEY A CIAMPORCERO JR
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

KIDWELL, M

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/375,045

Applicant(s)

MURJI, ZULFICAR

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Reference sign 4 as shown in figure 1. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5 – 12, 14 and 16 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Salerno et al. (WO 97/09015).

With respect to claim 1, Salerno et al. (hereinafter "Salerno") discloses a sanitary napkin for placement in a crotch portion of an undergarment of a wearer (5), said sanitary napkin having a main body with a longitudinal axis, two opposite longitudinal side areas and a central region intermediate said two opposite side areas (figure 1), said sanitary napkin being characterized by a preferential bending zone on said main body extending obliquely in relation to the longitudinal axis (50), said preferential bending zone extending from one longitudinal side area of the sanitary napkin to an

Art Unit: 3761

opposite longitudinal side area, crossing the longitudinal axis of the sanitary napkin at the central region as set forth in figure 1.

Regarding claims 3 and 14, Salerno discloses a plurality of preferential bending zones (50) being spaced apart from one another in figure 1.

As to claims 6 and 17, Salerno discloses the preferential bending zone to be arcuate in figure 1.

With reference to claims 7 and 18, Salerno discloses a sanitary napkin (5) wherein the main body includes a fluid permeable cover layer, an absorbent system and a liquid impervious barrier as set forth on page 8, lines 3 – 25.

As to claims 8 – 9 and 19 – 20, Salerno discloses that the preferential bending zone is an embossment that may be on the fluid permeable cover layer on the absorbent system as set forth on page 17, lines 29 – 33.

Regarding claims 10 – 11 and 21 – 22, Salerno discloses that the sanitary napkin includes a fastener, in the form of a flap, for retaining the main body to an undergarment as set forth on page 18, line 31 to page 19, line 5.

As to claim 12, see the rejection of claim 1.

With reference to claim 16, Salerno discloses a sanitary napkin wherein the preferential bending zones are operative to create resistance to lateral compression when the sanitary napkin is in use as set forth on page 1, lines 6 – 16.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 – 18 copending Application No. 09/375,343, over claims 1 – 14 of copending Application No. 09/374,512, and over claims 1 and 4 – 19 of copending Application No. 09/477,244.

This is a provisional obviousness-type double patenting rejection.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application, application no. 09/375,343 and application no. 09/374,512 and application no. 09/477,244 disclose a sanitary napkin adapted to be worn in a crotch portion of an undergarment comprising a fluid-pervious cover layer, an absorbent system, a liquid-impervious barrier layer, a thickness, and at least one preferential bending zone extending from one longitudinal side area of the

sanitary napkin to an opposite longitudinal side area, crossing the longitudinal axis of the sanitary napkin.

Response to Arguments

Applicant's arguments filed July 30, 2001 have been fully considered but they are not persuasive.

While the examiner appreciates the applicant's definition of "oblique", it should be noted that the term "oblique" may also be defined as neither perpendicular nor parallel as provided in Webster's Ninth New Collegiate Dictionary.

The applicant admits in the response dated July 30, 2001 that Salerno discloses an arcuate bending zone along lines 50. This arcuate bending zone is located in a region outside the transverse end edges of the stabilizing element as taught by Salerno on page 17, lines 1 – 19.

As shown in figure 1, the arcuate preferential bending zone extends obliquely (i.e., is neither perpendicular nor parallel to) in relation to the longitudinal axis and extends from one longitudinal side area of the napkin to an opposite longitudinal side area, crossing the longitudinal axis of the napkin at the central region.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

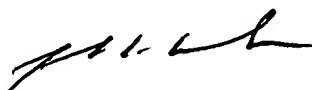
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.


Michele Kidwell
October 5, 2001


John G. Weiss
Supervisory Patent Examiner
Group 3700